IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. 3153 /2003

PETITIONERS

1. Vidyadhar Mishra, son of Shri Satyadev Mishra,
2. Bhashkar Mishra, aged about 15 years.
3. Diwakar Mishra, aged about 13 years.
4. Sudhakar Mishra, aged about 11 yeas

Sl.No. 2 to 4 are minors through : their natural guardian father i.e. petitioner No.1.,

All are resident of Station Road, Raipur (Chhattisgarh)

P.R. No. 3404/03
Presented by Shri P.P. Sahu
dated 29.09.03

VERSUS

RESPONDENT

Mohan Lal Chouhan, son of Shri Narsingh Chouhan, resident of 749 MPHB Colony, tilak Nagar, Gudhiyari, Distt. Raipur (Chhattisgarh)

WRIT PETITION UNDER ARTICLES ~~226~~/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS/CERTIORARI, ORDER/ORDERS, DIRECTION / DIRECTIONS PROHIBITION ETC.

01) **PARTICULARS ABOUT THE PETITIONER**:
As per cause title.

02) **PARTICULARS ABOUT THE RESPONDENTS**:
As per cause title.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.3153/ सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

15.11.2003

Shri P.P. Sahu, counsel for the petitioners.

By this writ petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 14.07.2003 passed by the XI Civil Judge, Class-II, Raipur, by which the learned Civil Judge has allowed the application filed by the respondent herein to stay the execution in the eviction proceedings.

The case of the petitioners is that the father of petitioner No.1, Landlord, filed a civil suit against the respondent for eviction from house No.18/80 on the ground of default i.e. non-payment of rent and sub-letting part of the premises, in the year 1991 and summon of the suit was issued. The respondent filed written statement and after framing issues, respondent remained absent. Therefore, the suit was proceeded ex-parte. The learned trial Court after recording the evidence of the plaintiff decreed the suit in favour of the landlord on 27.11.2001. Thereafter, the petitioners moved an application for execution of the decree and the notice of the execution was issued, but that could not be served on the respondent. In the meanwhile, the respondent herein filed an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, on 08.05.2002 for setting aside the ex-parte decree. Even during the pendency of that application the petitioners moved an application that the respondent is destructing the house as well as other properties attached to the house and even the respondent has also cut the trees and damaging the house. The respondent also filed an application under Section 151 of the C.P.C. in the

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मामला क्रमांक W.P.3153/ सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

execution proceedings for staying the execution. The learned trial Court stayed the execution proceedings, till the decision of the application, by the impugned order.

I have heard the learned counsel for the petitioners.

Learned counsel for the petitioners submitted that ex-parte decree was passed on 27.11.2001, whereas the respondent filed an application under Order 9 Rule 13 of the C.P.C. on 08.05.2002 i.e. after more than six months. Thereafter, respondent moved an application in the executing proceedings and execution proceedings is pending and has been stayed and the application filed by the respondent for setting aside the ex-parte decree is not being decided by the learned trial Court and more than one and half years has elapsed. Thereafter, the petitioners are not able to reap the fruits of the decree and they are being prevented to execute the decree by innocuous procedure adopted by the Court below.

I have perused the impugned order in which the learned Civil Judge has observed that if the execution proceedings are not stayed, then the application filed by the respondent under Order 9 Rule 13 of the C.P.C. will become meaningless, therefore the execution proceedings are stayed. There is no doubt, in such a situation the order passed by the learned Civil Judge staying the execution cannot be said to be without jurisdiction or illegal but, at the same time, the learned Civil Judge must consider the other aspects of the case that after ten years, the decree was passed against the respondent that too, the respondent remained present and after filing of the written statement he remained absent and the Court proceeded ex-

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मामला क्रमांक W.P.3153/ सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

parte, and after six months he applied for setting aside the decree and even that application is pending for considering before the trial Court since last more than one and half years and the petitioners are being deprived from reaping the fruits of the decree on account of the laxity on the part of the subordinate Court. Looking to the facts and circumstances of the case, the learned Civil Judge ought to have decided the application filed by the respondent under Order 9 Rule 13 of the C.P.C. expeditiously, so that the fate of the plaintiffs was decided one way or the other.

In view of the above circumstances, while dismissing the writ petition, the learned Civil Judge is directed to decide the application filed by the respondent under Order 9 Rule 13 of the C.P.C. as expeditiously as possible, but not later than three months from today.

With the above observations and directions, the petition stands disposed of.

Consequently, M.(W.)P.No.2881/2003 and I.A.No.9297/2003 also stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Soma